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No. 04-702

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

SALIM AHMED HAMDAN,

Petitioner,

v.

DONALD H. RUMSFELD, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF OF AMICI CURIAE HUMAN RIGHTS FIRST, PHYSICIANS FOR HUMAN RIGHTS, *et al.* IN SUPPORT OF PETITIONER

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STATEMENTS OF INTEREST OF AMICI CURIAE[1]

Amici are individuals and organizations with expertise in the practice of prolonged detention and its effects on physical and psychological health.

Since 1978, Human Rights First, formerly the Lawyers Committee for Human Rights, has worked in the United States and abroad to create a secure and humane world by advancing justice, human dignity and respect for the rule of law. Human Rights First (HRF) works to support human rights activists who fight for basic freedoms and peaceful change at the local level; ensure that domestic legal systems incorporate international human rights protections; and help build a strong international system of justice and accountability for the worst human rights crimes. Since 2002, HRF has consulted with the Pentagon in the formulation of military commission rules and procedures, has been one of a handful of international organizations invited to observe military commission proceedings at Guantanamo Bay, and has been working closely with interested parties there to promote compliance with fair trial procedures under U.S. and international law.

Physicians for Human Rights (PHR) has worked as a non-profit organization since 1986 to investigate and expose violations of human rights worldwide using medical and scientific methods. PHR's work includes efforts to stop

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1. The parties in this case have consented to the filing of this brief. Their letters are on file with the Clerk of this Court. Pursuant to Rule 37.6, Amici state that no counsel for any party has authored this brief in whole or in part, and no person or entity other than Amici and their counsel contributed monetarily to the preparation or submission of this brief.

torture, disappearances, and political killings by governments and opposition groups; to improve health and sanitary conditions in prisons and detention centers; to investigate the physical and psychological consequences of violations of humanitarian law in internal and international conflicts; to defend medical neutrality and the right of civilians and combatants to receive medical care during times of war; to protect health professionals who are victims of violations of human rights; and to prevent medical complicity in torture and other abuses. In 1997, PHR shared in the Nobel Prize for Peace as part of the Steering Committee of the International Campaign to Ban Landmines.

Founded in 1990 by a group of volunteer physicians, Doctors of the World-USA is an international health and human rights organization working where health is diminished or endangered by violations of human rights and civil liberties. Doctors of the World mobilizes the health sector to provide essential care and services while training community residents to carry on the mission of health and to promote basic human rights in the United States and abroad. Since 1993, Doctors of the World has provided medical and psychological support to torture victims. In 2002, Doctors of the World provided evaluation services to more than 350 survivors of torture and other human rights violations in the United States.

Advocates for Survivors of Torture and Trauma (ASTT) has been treating survivors of torture and severe trauma since 1994 – work for which it has become widely recognized. ASTT has developed an extensive network of partnerships among organizations and professionals who serve torture survivors, and has been instrumental in assisting clients to cope with the consequences of having been tortured and, in

many cases, to obtain political asylum in the United States. ASTT has also been involved in training others to treat torture survivors, both in the United States and Guatemala.

The Boston Center for Refugee Health and Human Rights (the Center) was established in 1998 to provide medical and psychological assistance to anyone who has been subjected to torture and related trauma. The Center's work includes providing comprehensive health care for refugees and survivors of torture, educating and training agencies and professionals who serve these communities, conducting clinical, epidemiological, and legal research, and advocating for the promotion of health and human rights.

Global Lawyers and Physicians (GLP), founded in 1996, is a non-profit non-governmental organization that focuses on health and human rights issues. GLP was formed to reinvigorate the collaboration of the legal and medical/public health professions to protect the human rights and dignity of all persons. GLP works at the local, national, and international levels on issues with a focus on health and human rights, patient rights, and human experimentation.

The Program for Survivors of Torture and Severe Trauma (PSTST) at the Center for Multicultural Human Services (CMHS) is a grant-funded program that has been in existence since 1998. PSTST provides psychological, psychiatric, and case management services to over 150 torture survivors per year. The program's clients are refugees, asylum seekers, and asylees from all over the world who are struggling with the emotionally debilitating effects of torture.

Rocky Mountain Survivors Center (RMSC), located in Denver, Colorado, assists survivors of torture and war trauma,

and their families, to create a new future. Since 1996, they have achieved this by providing mental health counseling, and by coordinating access to health care, legal and social support services. RMSC also provides training to personnel from mainstream and expatriate community organizations that assist refugees and immigrants.

The Torture Abolition and Survivors Support Coalition International (TASSC) is the only organization founded by and for survivors. It was established on the guiding principles that torture is a crime against humanity and that survivors are among the strongest and most effective voices in the campaign to end the practice of torture. The mission of TASSC is to end the practice of torture wherever it occurs. TASSC operates independently of any political ideology, government, or economic interest. TASSC was founded in 1998 and is a non-profit organization

Dr. Allen Keller is a recognized expert in the evaluation and treatment of victims of torture and other human rights abuses. He is Assistant Professor of Medicine at New York University School of Medicine and Society Master for the May Chinn Society for Bioethics and Human Rights, NYU School of Medicine Master Scholars Program. He is the founder and Director of the Bellevue/NYU Program for Survivors of Torture, which provides comprehensive, medical, mental health and social services to refugees and asylum seekers who have suffered from torture and other human rights abuses. Since the program began in 1995, over 1,300 men, women and children from more than 70 countries have received care. The Program has established an international reputation for excellence in its clinical, educational and research activities. In 2003, Dr. Keller received the Barbara Chester Award from the Hopi

Foundation in recognition of his outstanding work in caring for torture victims. Recently, Dr. Keller completed a study examining the health impact of prolonged detention of asylum seekers in the United States.

SUMMARY OF THE ARGUMENT

As individuals and organizations with expertise in the practice and health effects of prolonged detention, Amici believe the reasons for granting Salim Ahmed Hamdan's petition for certiorari before judgment are compelling. Mr. Hamdan has now been held for three years by U.S. forces – more than two years before being charged with any offense, and almost a full year in solitary confinement. Pet. Br. 1-3. Whatever the legal consequences of such indefinite detention and prolonged solitary confinement, its physical and psychological toll is profound. Especially where, as here, the public importance of the military commission trials is evident, and the danger of torture or further abuse quite real, rapid resolution of Mr. Hamdan's case is critical.

This Court, along with our allies abroad and practitioners in detention and psychiatric care, has long understood the devastating mental and physical health effects of indefinite detention and prolonged isolation. Indeed, experience in both criminal punishment and wartime internment over the past two centuries has shown that prolonged solitary confinement can produce confusion, paranoia, and hallucinations, as well as severe agitation and impulsive violence (including suicide) – effects that can be long term. Uncertainty while awaiting punishment, and the mental anxiety that accompanies an indeterminate fate, can be similarly destructive. It was for precisely this reason – the effectiveness of indefinite detention and solitary confinement in provoking anxiety and

psychiatric instability – that the CIA included them among its principal techniques of coercion in now repudiated manuals on interrogation from the 1960's. And it has been for the same reasons that courts have found certain such conditions of confinement violate the Eighth Amendment prohibition against cruel and unusual punishment.

In this case, the risks to Mr. Hamdan are especially acute. Since his capture in Afghanistan in late 2001, Mr. Hamdan alleges he has been subject to beatings by U.S. forces, made to sit motionless for days, dressed inadequately in subfreezing temperatures, and threatened with death, torture and imprisonment. Pet. App. 59-60. From December 2003 until late October 2004, Mr. Hamdan was held in solitary confinement at the U.S. Naval Base at Guantanamo Bay ("Guantanamo") in an eight-by-five foot steel detention cell, denied contact with other detainees, and permitted only very limited access to a translator. He was initially denied outdoor exercise during daylight and denied medical treatment despite his repeated requests. Pet. App. 60-61. Mr. Hamdan's appointed military lawyer, Lt. Cmdr. Charles Swift, described his client during that time as suffering "uncontrollable weeping at inappropriate times, undirected anger, and unresponsiveness," and expressing a desire to kill himself. During his period of solitary confinement, Mr. Hamdan lost on the order of 50 pounds.

While Respondent effected Mr. Hamdan's return to the general Guantanamo prison population just days before the U.S. federal district court heard oral arguments in his case, the damage Mr. Hamdan has already suffered, the continued uncertainty of his fate (which may include a death sentence or life imprisonment), and the real risk of torture or other forms of abuse at Guantanamo make it essential that this Court act promptly to resolve the legal questions presented in his case.

ARGUMENT

I. Certiorari Before Judgment Is Warranted Where It Is Imperative Decision Be Rendered Without "Any Avoidable Delay"

Supreme Court Rule 11 recognizes the propriety of granting a writ of certiorari before judgment below "upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court." Sup. Ct. R. 11. There can be no question here of the "public importance" of the first military commission trials to be conducted since World War II. Pet. Br. 6-11; *see especially Ex Parte Quirin*, 317 U.S. 1, 18-19 (1942) (military trial of enemy spies requires Court decision without "any avoidable delay"); *Dames & Moore v. Regan*, 453 U.S. 654, 668 (1981) (questions involving presidential efforts to secure release of U.S. hostages in Iran warranted immediate review).

As this Court has recognized in multiple contexts, the risk of ongoing harm or imminent injury to a petitioner may be grounds for considering a case outside the normal course. *See, e.g., Rumsfeld v. Padilla*, 124 S. Ct. 1353 (2004) (briefing schedule expedited in case reviewing president's power to indefinitely detain U.S. citizen as "enemy combatant"); *Alexander v. Holmes County Board of Education*, 396 U.S. 19 (1969) (case involving denial of fundamental rights to school children expedited and set for early argument); *Katzenbach v. McClung*, 379 U.S. 294 (1964) (oral argument advanced in case involving ongoing racial discrimination).

These interests are particularly compelling where, as here, delay may prolong harms of constitutional magnitude. *See, e.g., Jones El v. Berge*, 164 F. Supp. 2d 1096 (W.D. Wis. 2001) (preliminary injunction to address conditions of confinement that "deprive prisoners of the 'minimal civilized measure of life's necessities'"); *Ruiz v. Johnson*, 37 F. Supp. 2d 855 (S.D. Tex. 1999) (daily psychological harm suffered through total deprivation from human contact and mental stimulus is cruel and unusual punishment), *rev'd on other grounds*, 243 F.3d 941 (5th Cir. 2001), *adhered to on remand*, 154 F. Supp. 2d 975 (S.D. Tex. 2001); *Madrid v. Gomez*, 889 F. Supp. 1146, 1264 (N.D. Cal. 1995) (lack of social contact, isolated location, lengthy and indefinite sentences of inmates at Pelican Bay prison violates Eighth Amendment rights of inmates who are mentally ill or have borderline personality disorders) ("If the particular conditions of [confinement] being challenged are such that they inflict a serious mental illness, greatly exacerbate mental illness, or deprive inmates of their sanity, then defendants have deprived inmates of a basic necessity of human existence – indeed, they have crossed into the realm of psychological torture.").

Indeed, where delay may increase the risk of presenting a question of constitutional import, this Court should act expeditiously to minimize the risk of error. *Cf. Lackey v. Texas*, 514 U.S. 1045 (1995) (Stevens, J., respecting denial of certiorari) (imposing punishment following prolonged detention as a result of delays in the resolution of the case may amount to cruel and unusual punishment in violation of the U.S. Constitution); *Foster v. Florida, et al.*, 537 U.S. 990 (2002) (Breyer, J., dissenting from denial of certiorari) ("[T]he combination of uncertainty of execution and long delay is arguably 'cruel.'").[2]

2. Our allies share this interest in avoiding prolonged delay in resolution of a case. *See Foster v. Florida, et al.*, 537 U.S. 990, 990 (Cont'd)

II. Profoundly Negative Physical And Psychological Consequences Flow From Prolonged Isolation And Indefinite Detention

The serious mental and physical health effects of prolonged isolation and indefinite detention are well documented and long understood. U.S. experience with prolonged incarceration in general, and solitary confinement in particular, grew from late eighteenth century efforts to rehabilitate 'social deviants' of the age. Larry E. Sullivan, *The Prison Reform Movement: Forlorn Hope* 5-9, 12-13 (1990). The so-called "Philadelphia System," which relied on "the complete isolation of the prisoner from all human society," produced incidences of psychiatric disturbance that were so dramatic and widespread that "its main feature of solitary confinement was found to be too severe." *In re Medley*, 134 U.S. 160, 168 (1890); *see also* Sullivan, *supra*, at 12-13.

Research by late nineteenth and early twentieth-century clinicians revealed that prisoners held under such circumstances suffered from anxiety, confusion, paranoia, and hallucinations, as well as from severe agitation and aimless violence. *See* Stuart Grassian & Nancy Friedman, *Effects of Sensory Deprivation in Psychiatric Seclusion and Solitary Confinement*, 8 Int'l J. of Law and Psychiatry 49, 53-56 (1986) (noting clinicians' "thousands of descriptions of psychosis associated with solitary confinement" and identifying the significance of the perceived

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(Cont'd)

(2002) (Breyer, J., dissenting from denial of certiorari) (citing *United States v. Burns*, [2001] 1 S.C.R. 283, 353 (Can.); *Pratt v. Att'y Gen.*, [1994] 2 A.C. 1, 4 (P.C. 1993); *Soering v. United Kingdom*, 11 Eur. Ct. H.R. (ser. A) at 439, 478 (1989)); *see also S v. Makwanyane*, 1995 (6) BCLR 665 (SA) (two years in prison awaiting death sentence is "intolerable situation" making it "essential that it be resolved one way or another without further delay").

or anticipated goal of confinement in affecting a prisoner's mental state); *see also* Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 Am. J. of Psychiatry 1450, 1450-51 (1983).

This Court recognized as much in holding that a statutory solitary confinement provision adopted during this era after a defendant committed the charged crime constituted additional punishment for *ex post facto* purposes:

> A considerable number of the prisoners fell, after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others still, committed suicide; while those who stood the ordeal better were not generally reformed, and in most cases did not recover sufficient mental activity to be of any subsequent service to the community.

In re Medley, 134 U.S. at 168.

While prolonged use of solitary confinement was thus largely abandoned in the United States by the turn of the twentieth century, Grassian, *supra*, at 1450, a new set of psychiatric studies emerged in the 1950's and 1960's finding similar effects from the detention of political prisoners in the former Soviet Union and in China, and of American prisoners held during the Korean War. *See, e.g.*, Philip E. Kubzansky, *The Effects of Reduced Environmental Stimulation on Human Behavior: A Review, in The Manipulation of Human Behavior* 51 (A.D. Biderman and H. Zimmer, eds. 1961); Christopher Burney, *Solitary Confinement* (1952) (describing the author's eighteen months in Fresnes, in occupied France, during World War II). It is precisely for this reason – the effectiveness of

indefinite detention and solitary confinement in provoking anxiety and psychiatric instability – that the CIA included them among its principal techniques of coercive interrogation in its 1962 and 1983 manuals on counterintelligence interrogation.[3]

Contemporary research confirms the harmful consequences of detention environments that physically segregate inmates from the larger detainee population, require detainees to eat all meals alone, restrict access to the outside to one hour a day, and allow for no face to face visits with family members. *See, e.g.*, Craig Haney, *Mental Health Issues in Long-Term Solitary and 'Supermax' Confinement*, 49(1) Crime & Delinq. 124, 130-32 (2003) (reviewing studies). Effects again range from depression and anxiety, to difficulties in concentration and memory, to hypersensitivity to external stimuli, hallucinations and perceptual distortions, paranoia, and problems with impulse control. *Id.*; *see also Davenport v. DeRobertis*, 844 F.2d 1310, 1316 (7th Cir. 1988); *Perri v. Coughlin*, 1999 U.S. Dist LEXIS

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3. *See, e.g.*, Central Intelligence Agency, KUBARK Counter-intelligence Interrogation, July 1963, at 90

> An early effect of [solitary confinement] is anxiety. . . . The interrogator can benefit from the subject's anxiety. As the interrogator becomes linked in the subject's mind with the reward of lessened anxiety, human contact, and meaningful activity, and thus with providing relief for growing discomfort, the questioner assumes a benevolent role. . . . The result, normally, is a strengthening of the subject's tendencies toward compliance.

Available at http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB122/index.htm (accessed Dec. 22, 2004); *see also* Central Intelligence Agency, Human Resources Exploitation Training Manual, 1983, at § K-1, *available at* http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB122/index.htm (accessed Dec. 22, 2004).

20320, at *7 (N.D.N.Y. June 11, 1999); Decl. of Daryl Matthews, M.D., Ph.D., *Swift v. Rumsfeld*, No. 04 Civ. 0777L (W.D. Wash. filed Mar. 31, 2004), ¶¶ 13-16. Indeed, a literature review of studies documenting the psychological effects of solitary confinement concluded that "there is not a single published study of solitary or supermax-like confinement in which nonvoluntary confinement lasting for longer than 10 days, where participants were unable to terminate their isolation at will, that failed to result in negative psychological effects."[4]

While some of the most severe symptoms of prolonged isolation may ease following reintegration into a broader population, many may suffer permanent harm from prolonged solitary detention – including an inability to engage in normal social interaction. Studies of former prisoners of war reveal long-term effects of such confinement, from symptoms of post traumatic stress to an inability to tolerate social interaction. *See* Patricia B. Sutker, et al., *Cognitive Deficits and*

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4. Craig Haney, *Mental Health Issues in Long-Term Solitary and 'Supermax' Confinement*, 49(1) Crime & Delinq. 124, 130-32 (2003) (reviewing empirical studies)

> [D]irect studies of prison isolation have documented an extremely broad range of harmful psychological reactions. These effects include increases in the following potentially damaging symptoms and problematic behaviors: negative attitudes and affect, insomnia, anxiety, panic, withdrawal, hypersensitivity, ruminations, cognitive dysfunction, hallucinations, loss of control, irritability, aggression, and rage, paranoia, hopelessness, lethargy, depression, a sense of impending emotional breakdown, self-mutilation, and suicidal ideation and behavior.

(Internal citations omitted).

Psychopathology Among Former Prisoners of War and Combat Veterans of the Korean Conflict, 148(1) Am. J. Psych. 67, 67-72 (1991) (former prisoners of war 40 years after release from detention suffered symptoms of anxiety, confusion, depression, suspiciousness, and detachment from social interaction). One recent study of Danish prisoners likewise found that for those held in solitary confinement for longer than four weeks

> the probability of being admitted to the prison hospital for a psychiatric reason was about 20 times as high as for a person [in a mainline prison], leading the researchers to conclude that individuals detained [in solitary confinement] are forced into an environment that increases their risk of [psychiatric] hospitalization.

Haney, *supra*, at 143-44 (internal citation omitted).

Finally, uncertainty surrounding one's fate in detention can only exacerbate the impact of prolonged isolation. *See Foster*, 537 U.S. at 990 (Breyer, J., dissenting from denial of certiorari) ("[T]he combination of uncertainty of execution and long delay is arguably 'cruel.' This Court has recognized that such a combination can inflict 'horrible feelings' and 'an immense mental anxiety amounting to a great increase of the offender's punishment.'") (quoting *In re Medley*, 134 U.S. at 172 (statute requiring time of execution of sentence to be kept secret from prisoner was additional punishment for ex post facto purposes, as "one of the most horrible feelings to which [one] can be subjected" while awaiting execution is "the uncertainty during the whole of it," and such "secrecy must be accompanied by an immense mental anxiety amounting to a great increase of the offender's punishment")). Indeed, studies of victims of torture and coercive interrogation often find victims reporting

that the worst part of their detention was the time between interrogation sessions, "when they were frightened of what was going to happen." John Conroy, *Unspeakable Acts, Ordinary People: The Dynamics of Torture* 47, 170 (2000) (citing Ole Vedel Rasmussen, *Medical Aspects of Torture*, 37 Danish Med. Bull. 1 (1990)).

III. The Circumstances Of Mr. Hamdan's Detention Make Him Especially Vulnerable

Since his capture in Afghanistan in late 2001 and transfer to Guantanamo sometime in 2002, Pet. App. 1-2, Mr. Hamdan has been subject to treatment that would be unlawful at any federal detention facility in the United States.[5] While his recent return (on the eve of Respondent's appearance in the district court) to the general prison population at Guantanamo is welcome, Mr. Hamdan's treatment to date, coupled with the still harsh detention conditions at Camp Delta and the

5. *See Bell v. Wolfish*, 441 U.S. 520 (1979) (conditions of pretrial detention violate due process when they amount to punishment); *see also Chambers v. Florida*, 309 U.S. 227, 237 (1940) (listing solitary confinement along with "[t]he rack, the thumbscrew, [and] the wheel," as methods of compulsion used through the centuries to obtain confessions, leaving "their wake of mutilated bodies and shattered minds"); *Gray v. Spillman*, 925 F.2d 90, 93-94 (4th Cir. 1991) (beating or threatening a pretrial detainee in order to extract information is "an absolutely impermissible" governmental justification and would violate the Fifth Amendment); *Wilkins v. May*, 872 F.2d 190, 194 (7th Cir. 1989) (noting "if ever there were a strong case for 'substantive due process,' it would be a case in which a person who had been arrested but not charged or convicted was brutalized while in custody."); *Lock v. Jenkins*, 641 F.2d 488 (7th Cir. 1981) (holding pretrial detainee in a 37 square foot cell for 22 hours a day amounts to punishment); *Campbell v. Cauthron*, 623 F.2d 503 (8th Cir. 1980) (holding 6-8 pretrial detainees in a 130 to 154 square feet cell for 24 hours a day is punishment).

continued uncertainty surrounding his fate, make prompt resolution of his case essential.

Mr. Hamdan maintains that U.S. officials in Afghanistan beat him, forced him to sit motionless for days, dressed him inadequately in subfreezing temperatures, and threatened him with death, torture and imprisonment. Pet. App. 59-60. Upon his arrival at Guantanamo, Mr. Hamdan was held in "Camp Delta," which he describes as "a single cell in a cellblock of 48 men," where the cells were "open to the air and I could talk to the other men." Pet. App. 60. As Mr. Hamdan describes it: "I was given 15 minutes a week of exercise in an 8 meter by 7 meter fenced in area." Pet. App. 60.

In July 2003, the President designated Mr. Hamdan as eligible for trials before military commissions that had been created by Executive Order in November 2001, and charges were issued in July 2004. Pet. App. 2. Shortly after Mr. Hamdan was designated as eligible for trial – and two years after Mr. Hamdan's initial detention – Respondent effected Mr. Hamdan's transfer to solitary confinement in a detention facility at Guantanamo known as "Camp Echo." Pet. 2; Pet. App. 60-61. Camp Echo consists of eight, windowless huts, each of which is divided into two separate compartments containing steel detention cells of eight feet by five feet. Decl. of Lt. Cmdr. Charles Swift, *Swift v. Rumsfeld*, No. 04 Civ. 0777L (W.D. Wash. filed May 3, 2004) (filed originally under seal), ¶ 3. During those eleven months, Mr. Hamdan was denied contact with other detainees and permitted only very limited access to a translator. He was initially denied outdoor exercise during daylight and denied medical treatment despite his repeated requests. Pet. App. 60-61. After two months in solitary, Hamdan described: "One month is like a year here, and I have considered pleading guilty in order to get out of here." Pet. App. 61.

Based on Mr. Hamdan's affidavits and reports of his attorney, an expert psychiatrist wrote to the federal district court below emphasizing the precariousness of Mr. Hamdan's condition. Decl. of Daryl Matthews, *supra*, at ¶ 7. Mr. Hamdan described his mood during solitary confinement as "deteriorating, . . . encompassing frustration, rage (although he has not been violent), loneliness, despair, depression, anxiety, and emotional outbursts." *Id.* at ¶ 11. Mr. Hamdan's appointed military defense counsel, Lt. Cmdr. Charles Swift, described his client's condition as "initially agitated and withdrawn, with a brightening mood as the visit proceeds, but ending with Mr. Hamdan begging him not to leave." *Id.* Lt. Cmdr. Swift also described witnessing significant mood swings, including "uncontrollable weeping at inappropriate times, undirected anger, and unresponsiveness." Decl. of Lt. Cmdr. Charles Swift, *supra*, at ¶ 7. During one period of a month between visits with Lt. Cmdr. Swift, Mr. Hamdan refused to eat, indicating later to Lt. Cmdr. Swift that he wanted to kill himself because he could no longer stand conditions in Camp Echo. *Id.* at ¶ 9. During his period of solitary confinement, Mr. Hamdan lost on the order of 50 pounds. *Bin Laden's Driver Arraigned at Gitmo*, Associated Press, Aug. 24, 2004, *available at* http: www.foxnews.com/story/0,2933,129814,00.html (accessed Dec. 22, 2004).

On this basis, Dr. Matthews concluded that Mr. Hamdan was "at significant risk for future psychiatric deterioration, possibly including the development of irreversible psychiatric symptoms." Decl. of Daryl Matthews, *supra*, at ¶ 14. Dr. Matthews noted in particular that "the psychological stress of the uncertainty he faces over his lack of charges and about the nature and duration of his future confinement." *Id.* at ¶ 15.

On the last business day before oral arguments were heard in the district court below, Appellants notified the court that

Mr. Hamdan had been returned to Camp Delta. Pet. App. at 42. While conditions at Camp Delta are a significant improvement over solitary, they remain far harsher than conditions recognized as unconstitutional by U.S. federal courts. *See* David Rose, *Guantanamo: The War on Human Rights* 59-63 (2004); *See, e.g., Jones El*, 164 F. Supp. 2d at 1102 (severe restrictions on personal possessions, illumination of cells 24 hours, and spending all but four hours in a cell is cruel and unusual punishment). *Lock v. Jenkins*, 641 F.2d 488 (7th Cir. 1981) (holding pretrial detainee in a 37 square foot cell for 22 hours a day amounts to punishment); *Campbell v. Cauthron*, 623 F.2d 503 (8th Cir. 1980) (holding 6-8 pretrial detainees in a 130 to 154 square feet cell for 24 hours a day is punishment). Dr. Matthews, who was permitted to spend a month observing Guantanamo detainees in 2003, characterizes Guantanamo as "prison plus." Rose, *supra*, at 65-67.

The maximum security cells in Camp Delta are approximately eight feet by seven feet by eight feet, barely the size of a king size bed. *See* Lawyers Committee for Human Rights, *Assessing the New Normal: Liberty and Security for the Post-September 11 United States* 53 (Deborah Pearlstein & Fiona Doherty, eds., 2003); Ron Martz, *Guantanamo Captives to Get Day in Court This Week*, Atlanta J.-Const., Apr. 18, 2004, at 14A. The cells are enclosed in a green metal box. Rose, *supra*, at 59. Each cell is separated from the other by mesh walls, and each has a sink with running water and a toilet (where detainees can be seen by guards who pass by every 30 seconds). *Id.* at 60. The lights remain on at all times. *Id.* There are two recreation/ exercise areas for every 48 detainees; currently, detainees are allowed 20 minutes of exercise followed by a shower twice a week. *See* official Joint Task Force Guantanamo website, *at* http://www.nsgtmo.navy.mil/jtfgtmo/d/dlt001.html (accessed Dec. 22, 2004); Rose, *supra*, at 59.

Under the circumstances, it is unsurprising that mental illness at Guantanamo is widespread. In January 2003, monitors from the International Committee of the Red Cross took the extraordinary step of reporting publicly its observation of a "worrying deterioration in the psychological health of a large number of [internees]." International Committee of the Red Cross, *Guantanamo Bay: Overview of the ICRC's Work for Internees* (2004), *available at* http://www.icrc.org/Web/eng/siteeng0.nsf/iwpList74/951C74F20D2A2148C1256D8D002CA8DC (accessed Dec. 22, 2004). Red Cross observers were clear about the cause:

> They have no idea about their fate and they have no means of recourse at their disposal through any legal mechanism. As [they] spend more time in Guantanamo and continue to have no idea what is going to happen to them, we are concerned that the impact on them will get more serious.

Rose, *supra*, at 67 (quoting International Committee of the Red Cross spokesperson Florian Westphal). By the end of September 2003, there had been 32 suicide attempts among Guantanamo detainees. Lawyers Committee for Human Rights, *supra*, at 53. Since then, detainees' efforts to injure themselves have been reclassified as "manipulative self-injurious behavior" – a classification unknown in the psychiatric literature. Rose, *supra*, at 65-66. According to Guantanamo Chief Surgeon Cpt. Stephen Edmonson, the drug most commonly prescribed to Guantanamo detainees is Prozac and analogous mood-enhancers; as of autumn 2003 more than one-fifth of Camp Delta inmates were taking such medications. *Id.* at 66.

Finally, press accounts and internal investigations revealed in recent weeks have now documented an alarming number of incidents of outright abuse at Guantanamo Bay. *See, e.g.*, Neil

A. Lewis and David Johnston, *New F.B.I. Files Describe Abuse of Iraq Inmates*, N.Y. Times, Dec. 21, 2004, at A1 (recounting July 2004 F.B.I. agent report describing Guantanamo detainees chained to the floor for 18-24 hours or more without food or water, left to soil themselves, and others subject to freezing temperatures, or temperatures "well over 100 degrees"); Neil A. Lewis, *F.B.I. Memos Criticized Practices at Guantanamo*, N.Y. Times, Dec. 7, 2004, at A19 (reporting cases confirmed by Army and F.B.I. spokesman in which a female interrogator squeezed one male detainee's genitals and bent back his thumbs; a prisoner was "gagged with duct tape that covered much of his head"; and a dog was used to intimidate a detainee); Josh White and John Mintz, *Red Cross Cites 'Inhumane' Treatment at Guantanamo*, Wash. Post, Dec. 1, 2004, at A10 (describing July 2004 Red Cross report to Pentagon finding use of forced nudity, severe temperatures, and other incidents of psychological and physical abuse at Guantanamo); Letter from T.J. Harrington, Deputy Ass't Dir., Counterterrorism Division, Federal Bureau of Investigation to Major General Donald J. Ryder, Dep't of the Army, Criminal Investigation Command 2 (July 14, 2004) (describing FBI agents' November 2002 observation of a detainee, who after more than three months in isolation in "a cell that was always flooded with light," exhibited "behavior consistent with extreme psychological trauma," including "talking to non-existent people, reporting hearing voices, crouching in a corner of the cell covered with a sheet for hours on end").

These reports echo accounts of other prisoners from Guantanamo. *See, e.g.*, Complaint, *Rasul v. Rumsfeld*, No. 04 Civ. 1864 (D.D.C. filed Oct. 27, 2004), at 24-38 (alleging treatment suffered by Rasul and others at Guantanamo as including severe beatings, intimidation by dogs, exposure to extreme heat and cold, and up to 30 days in isolation); Petition

for Writ of Mandamus and/or Writ of Habeas Corpus, *Al Qosi v. Bush, et al.*, No. 04 Civ. 1937 (D.D.C. filed Nov. 8, 2004), at 12-17 (alleging techniques used on Al Qosi and others as including sexual taunting, isolation in frigid temperatures, threats of transfer to countries known to use torture, and being strapped to the floor wrapped in an Israeli flag – all of which "contributed to a pervasive atmosphere of fear, intimidation and humiliation"). They also indicate that detainees may witness the abuse of their fellow detainees, compounding their fear. *See* Rose, *supra*, at 72 (Briton freed from Guantanamo reported having witnessed multiple beatings by guards: "I have seen people beat up – the swollen faces, the limping back or being dragged back. I've seen the effects of it.") Most important, they add to the urgency of resolving the status of Guantanamo detainees such as Mr. Hamdan.

While the removal of Mr. Hamdan from nearly a year in solitary confinement (on the eve of oral arguments in the district court) is a critical step, Mr. Hamdan is aware that Respondents retain the power to return him to those conditions of detention at any time. In the meantime, the uncertainty surrounding his fate – including a potential sentence of death if convicted before military commissions, and a lifetime of detention even if not – contributes to the deleterious effects of his confinement. The sooner his case may be resolved, whatever its outcome, the better the chance of mitigating these effects.

CONCLUSION

For the foregoing reasons, Amici request that this Court grant Mr. Hamdan's Petition for Certiorari before Judgment.

Respectfully submitted,

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